

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Teamsters, Chauffeurs, Warehousemen and Helpers,  
Local Union No. 542, International Brotherhood  
of Teamsters (United Parcel Service) and Derek  
Correia.** Case 21–CB–233544

December 16, 2019

DECISION AND ORDER

CHAIRMAN RING AND MEMBERS KAPLAN AND  
EMANUEL

On July 17, 2019, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified and set forth in full below.<sup>2</sup>

ORDER

The National Labor Relations Board orders that the Respondent, Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with loss of employment for engaging in union activities, including handbilling.

<sup>1</sup> The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We do not rely on the judge’s discussion of *NLRB v. Servette, Inc.*, 377 U.S. 46, 48 (1964), an inapposite case involving secondary activity that has no application to the leafleting in this case. In any event, neither party disputes the judge’s finding that employee Derek Correia’s handbilling was activity protected by Sec. 7 of the Act. Accordingly, the Respondent violated Sec. 8(b)(1)(A) of the Act by threatening Correia with job loss for engaging in that activity. See *Carpenters Local 180 (Condiotti Enterprises)*, 328 NLRB 947, 949-950 (1999).

<sup>2</sup> We shall modify the recommended Order to conform to the Board’s standard remedial language. We shall substitute a new notice to conform to the Order as modified.

(b) In any like or related matter restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its San Diego, California facility copies of the attached notice marked “Appendix.”<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 21 signed copies of the notice in sufficient number for posting by the Employer at its San Diego, California facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 2019

John F. Ring,

Chairman

Marvin E. Kaplan,

Member

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

---

 William J. Emanuel

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge if you engage in union activities, including handbilling.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS, LOCAL UNION NO. 542,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

The Board's decision can be found at <http://www.nlr.gov/case/21-CB-233544> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



*Robert MacKay, Esq. and Winkfield F. Twyman, Jr., Esq., for the General Counsel.*

*Fern M. Steiner (Smith, Steiner, Vanderpool, APC), for the Respondent.*

## DECISION

## STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, ADMINISTRATIVE LAW JUDGE. This case was tried in San Diego, California, on May 13, 2019. The complaint, based on timely filed charges by Derek Correia (Charging Party or Correia), alleges that Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542, International Brotherhood of Teamsters (Union or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act)<sup>1</sup> on December 14, 2018,<sup>2</sup> when an agent of the Union, Paul Samson (Samson), threatened the Charging Party with loss of employment with the Charging Party's employer United Parcel Services, Inc. (Employer or UPS) as a result of the Charging Party engaging in protected activities for the Union.

The Respondent denies these allegations and argues that in any event a threat from Samson does not violate the Act because Samson could not affect the Charging Party's employment in any way.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent on June 17, 2019, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

The parties stipulate, and I find, that the Employer is an Ohio corporation with a facility in San Diego, California, that during the year ending on December 31, the Employer derived gross revenues in excess of \$50,000 for the transportation of freight from the State of California to points directly outside the State of California, and that at all material times, the Employer has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. (Jt. Exh. 1.)<sup>3</sup> The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act and that Samson is an agent of the Respondent within the meaning of Section 2(13) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

This case turns on the disputed testimony by four witnesses about the December 14 threat that Samson, a union official, gave to the Charging Party, an employee of the Employer and a union member. I summarize below my credibility determina-

---

<sup>1</sup> 29 U.S.C. §§ 151-169.

<sup>2</sup> All dates are in 2018 unless otherwise specified.

<sup>3</sup> Abbreviations are used in this decision as follows: "Tr." for the transcript; "GC Exh." for the General Counsel's Exhibit; "GC Br." for the General Counsel's brief; "R. Exh." for the Respondent's exhibit; "R. Br." for the Respondent's brief; and "Jt. Exh." for the joint exhibits of the parties. On June 5, 2019, the General Counsel filed an unopposed motion to correct transcript errors at ten citations for Mr. Vivanco's testimony. I grant the unopposed motion as my notes from hearing are the same as the proposed corrections. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

tions of the witnesses and the resolution of the conflicting testimony.

#### *A. Removal Petition and Samson's Reaction*

Although the conversation at the center of this case occurred on December 14, the story here begins with the Charging Party's December 2017 handbilling and a subsequent petition to remove Samson as the business agent the following summer. Samson operates as a business agent for the Union at the Employer's San Diego and Chula Vista facilities. (Tr. 23, 96.) Section 2 of the National Master United Parcel Service Agreement describes the composition of this Union:

##### *Section 2. Employees Covered*

Employees covered by this Agreement shall be construed to mean, where already recognized, feeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, mechanics, maintenance personnel (building maintenance), car washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations performing load and unload duties, and other employees of the Employer for whom a signatory Local Union is or may become the bargaining representative. Employees of CSI and UPS Latin America, Inc. are also covered by this Agreement as specified in the P&D Supplement and the Challenge Air Cargo Supplement, respectively.

In addition, effective August 1, 1987, the Employer recognized as bargaining unit members clerks who are assigned to package center operations, hub center operations, and/or air hub operations whose assignment involves the handling and progressing of merchandise, after it has been tendered to United Parcel Service to effectuate delivery. These jobs cover: package return clerks, bad address clerks, post card room clerks, damage clerks, rewrap clerks, and hub and air hub return clerks. This Agreement also governs the classifications covered in Article 39 - Trailer Repair Shop. Effective no later than February 1, 2003 the Employer recognizes as bargaining unit members FDC/ODC clerks, international auditors, "smart label" clerks and revenue auditors who work in the operations facilities.

(Jt. Exh. 2.) Samson's responsibilities include policing the Union's collective bargaining agreements ("CBA") with Employer, directing work to union members based on seniority, answering questions, representing members in meetings, processing grievances, making telephone calls on behalf of the members, and performing site visits. (Tr. 98.) While Samson had no involvement in the hiring or firing the Charging Party or any other witness employee of the Employer, Samson in his role as union business representative was involved under the union contract in allocating work amongst union members. (Tr. 121.) Samson is also responsible for monitoring the Union's CBA with Employer to raise issues with UPS involving employees' terms and conditions of employment so if UPS insists that its Union employees work more hours than safe under the U.S. Department of Transportation (DOT) regulations or the terms of the CBA, Samson is the Union's business representative whose duties include pointing out to UPS any divergence

by UPS from the terms and conditions of the CBA or DOT regulations.

A number of union members became dissatisfied with Samson and did not believe he was representing them adequately from December 2017 through the summer of 2018. (Tr. 46, 65–66; R. Exhs. 8 and 9.) During the first half of 2018, over 400 union members at the Chula Vista and San Diego facilities signed a petition to remove Samson as the business agent (the "petition"). (Tr. 113; R. Exh. 8, 9.)

At a June 2 union meeting also discussing the union contract, Samson addressed his feelings about the petition. He told his side of the story and said that the writer of the petition was unethical. (Tr. 120–121, 126.) According to Samson's account, the creator of the petition circulated it because the creator was unhappy that Samson followed the union contract in allocating work. (Tr. 121.) Samson also said that the creator circulated the petition for personal gain and that "we need to get rid of people like" the creator.<sup>4</sup> (Tr. 131.) Samson then said that his children knew about the petition and pointed out his wife, who sat at the back of the meeting. (Tr. 132, 133.) He also called up the various shop stewards and said, "When you take a shot at me, you take a shot at them," while gesturing to the shop stewards. (Tr. 132.)

Despite Samson's own and Rhett Dillard's account of Samson's emotional display, Samson repeatedly insisted that he did not take the filing of the petition against him personally and that the filing of the petition did not bother or upset him. (Tr. 114, 115, 122.) I observed Samson's testimony at hearing regarding his alleged indifference to the filing of the petition as being completely unbelievable. Even though Samson testified about his own emotional statements and Dillard corroborated that testimony, Samson contradicted his own testimony. This diminishes his credibility, and to the extent that Samson's testimony disagrees with that of others, Samson's willingness to lie on the stand calls his pronouncements on other issues into doubt.

#### *B. Correia's December 14 Handbilling*

Starting around 7 a.m. on December 14, the Charging Party came to the San Diego facility while not scheduled to work to hand out flyers informing the Employer's drivers of their rights. (Tr. 30.) The Charging Party did so because he heard many reports of people being scheduled to work shifts up to six days and seventy hours a week. (Tr. 26–27, 29.)

Samson's response was that the employees can call into work and take a sick day, if necessary. (Tr. 26–27, 102.) Fellow union members, John Tunnell and Samuel Vivanco, joined the Charging Party to hand out flyers that morning. (Tr. 30, 61, 72–73, 85, 105.) Vivanco joined "because he [Vivanco] said the Union would never respond to any telephone calls or questions because they are never around." (Tr. 30–31.) Tunnell, who corroborated these events, left before Samson arrived at the facility and conversed with the Charging Party. (Tr. 73.)

The flyer the Charging Party handed out in December 2018

<sup>4</sup> This statement comes from the testimony of union member Rhett Dillard, who attended the June 2 meeting. No other witness contradicted this testimony, and I find Dillard's testimony regarding this statement to be credible.

is almost identical to one he handed out the prior December 2017 and has the following text:

**KNOW YOUR RIGHTS!!!!**

- DOT Regulations—11 on road hours and 14 total is the DOT limit. The 14 hours per day are on duty time which includes lunches, but does not mean 14 total hours worked.
- Western Regional Supplemental Agreement—Article 20 sec. 2(a)  
Regular scheduled work week shall consist of (5) consecutive (8) hour days Monday through Friday or Tuesday through Saturday.  
(b) No employee with a seniority date prior to 2011 will be forced on to a Tuesday through Saturday unless mutually agreed to or unless the employee bid such work week in accordance with the bidding procedures.  
(c) Start times shall be posted on the Friday of the week for which the starting times shall be effective.
- Article 23—MAINTENANCE OF STANDARDS—The employer agrees that all conditions of employment in his individual operation relating to wages, guaranteed hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards.
- Southwest Package Rider—Section 10 (subsection 2)—Same rules as Article 20 sec. 2 in the Western Region Supplemental.
- Western Region Supplemental Agreement—Preamble—Any lesser conditions contained in any rider or Addendum shall be superseded by the conditions created in this Agreement.
- National Master Agreement—Article 18—Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to a person or property in violation of a government regulation relating to safety.

(Tr. 24–34; GC Exh. 2.) This flyer quotes language from Department of Transportation regulations and language from the Union CBA with Employer. (Tr. 24–34, 41–43.)

Correia gave this same flyer to workers in December 2017. (Tr. 26.) Correia and other union members passed this flyer out after receiving complaints and phone calls from employees stating that management at the Respondent was requiring them “to work six days a week and up to seventy hours a week.” (Tr. 26.) This conduct violated the collective-bargaining agreement and, more importantly, Department of Transportation regulations. (Tr. 24–34; GC Exh. 2.) Samson passed out the same

flyer because the Respondent repeated this conduct in both the 2017 and 2018 winter shipping seasons. (Tr. 29.)

On December 14, Samson arrived at the San Diego facility near 9 a.m. after a conversation between the Charging Party and the San Diego facility shop steward Rob Moreno (Moreno). (Tr. 105.) Evidently this conversation was heated, given that the Charging Party later texted coworkers that “[Rob Moreno] and I are no longer friends.” (GC Exh. 3.) The account of what happened once Samson arrived at UPS on December 14 is heavily disputed. I recount the four versions of the events below.

*C. Correia’s Version of the Conversation*

Correia is a package driver at the UPS facility in San Diego and is a Union member. (Tr. 22.) Correia also engages in significant union activity, including handing out flyers to the members, educating and informing them about contractual issues, attending monthly meetings, speaking to members on a daily basis, and reading up on by-laws. (Tr. 24.) Even though Correia was out on disability leave from November 20, 2016, to September 28, he engaged in union activities, including hand-billing, throughout. (Tr. 25–28.)

When Samson arrived between 8:15 and 9 a.m., Correia said that Samson “got right in [Correia’s] face.” (Tr. 31–32, 43.) The following exchange happened:

Samson:	Give me that flyer.
Correia:	Absolutely not.
Samson:	Well let me look at it.
Correia:	No.
Samson:	What are you doing here?
Correia:	I’m doing my due diligence.
Samson:	Due diligence, huh? You know what your problem is? You have no integrity.
Correia:	Integrity? You have no integrity. You never inform the [union] members.
Samson:	You don’t know shit anyway. You’ve been out so long with your injury, you don’t know what’s going on.
Correia:	That’s why we’re out here. We’re informing and educating the members, because you never come here.
Samson:	(After walking away then turning around) You know what, man? Your days at this company are numbered. You’re done. You’re finished.
Correia:	Yeah, you’re finished too.
Samson:	Do me that favor.

(Tr. 32–33.) Correia said he did not give Samson the flyer because Samson often took credit for Correia’s suggestions and solutions to problems in the past. (Tr. 33, 43.)

After the altercation, Correia texted several coworkers a description of the events at 9:06 a.m. (Tr. 53–54.) The text is reproduced below:

I just finished up handing out flyers at the UPS SD bldg. I was approached by their shop steward Rob Moreno and needless to say he and I are no longer friends 😬😬 He ran and called Samson who then arrived at the bldg. shortly afterward. Samson asked me for a flyer and I refused to give him one. Needless to say, it ended in a shouting match in front of all the

drivers coming in at the guard shack. He told me that he'll make sure I'm out of UPS and I also promised him the same fate. He said I don't know shit cus [sic] I was away for too long with my injury. Poor bastard doesn't realize I was hitting all the bldgs while I was out injured.

(GC Exh. 3.) This description of the events mirrors Correia's testimony.

*D. Vivanco's Version of the Conversation*

Samuel Vivanco is also a package driver at the UPS facility in San Diego and is a member of the Union. (Tr. 59.) He testified that on December 14, Samson approached around 8:20 a.m. (Tr. 62.) Samson apparently got "approximately [Vivanco's] arm length" away from Correia before the conversation happened. (Tr. 63.) During this whole time, Vivanco was next to Correia on his left side. (Tr. 63.) Vivanco testified to the following conversation:

Samson: Can I have one of those?  
Correia: No, you cannot.  
Samson: Why not?  
Correia: Because we did this for our members and you didn't.  
Samson: What are you doing here?  
Correia: I'm here doing my due diligence because it will help the members with any information.  
Samson: You have no authority.

(Tr. 63 (verbal filler eliminated).)

After walking about ten feet away from Correia, Vivanco testified that Samson turned around, told Correia that he had no integrity, and told Correia that he was no longer with the company and that he was done. (Tr. 63–64.) Correia replied that Samson's days were over. (Tr. 64.)

*E. Samson's Version of the Conversation*

Samson testified that he went to the San Diego facility on December 14 after receiving a call from Moreno regarding an argument he had with people passing out flyers. (Tr. 105.) Samson said he approached Correia and had the following conversation after arriving:

Samson: Can I have a copy?  
Correia: No.  
Samson: Why not?  
Correia: Because you don't do shit for the [union] members.  
Samson: How do you know when you haven't been around for a year and a half?  
Correia: You've seen me out here. I've been passing out.  
Samson: Where's your integrity?  
Correia: (As Samson was walking away)  
You're not going to be here very long.  
Samson: You going to do me a favor?

(Tr. 106.) Samson said Chris Turner was going through security at the guard shack as Samson walked up to the guard shack. (Tr. 106.)

*F. Chris Turner's Version of the Conversation*

Chris Turner is another package driver at the Chula Vista facility for the Employer and he is also a Union member. (Tr. 83.) He worked at the San Diego building on December 14 and thus saw people handing out flyers there. (Tr. 84–85.) Turner stated that after he got out of a car and followed Samson in from about two to three feet behind him, Turner heard someone yelling aggressively at Samson. (Tr. 86.) I observed Turner testify in an uncomfortable and fidgety manner that Samson did not engage with the person and acted professionally the entire time. (Tr. 86–87.) Turner said that Samson maintained this demeanor even after the person told Samson that his days were numbered. (Tr. 87.)

Turner provided a subsequent statement on January 24, 2019. (Tr. 92–94.) It is reproduced below:

On the 14th of December I witnessed a guy passing out flyers being aggressive toward Paul Samson. The guy was telling Paul that his (Paul's) days were numbered. In my opinion Paul did nothing wrong and was completely professional about the whole situation.

/s/ Chris Turner

(R. Exh. 7.) Turner did not sign this statement under the penalty of perjury. Id.

*G. My Findings of the Conversation*

As a preliminary matter, I reject Chris Turner's testimony regarding the December 14 events. He testified that no conversations took place, but that directly conflicts with all other testimony about the conversation. Even Samson testified about the contents of his conversation with Correia that happened. Accordingly, I find that Samson had a conversation with Correia upon arriving to the San Diego facility.

Neither Correia nor Vivanco nor Samson dispute that Samson asked Correia for a flyer and Correia declined to give him one. What happened next is murkier. Samson clearly told Correia that he did not know anything about the facilities due to Correia's absence, and Samson clearly told Correia that he had no integrity. There are two disputed facts. First, whether Samson told Correia that he "doesn't know shit" or the other way around. Second, whether Samson threatened Correia with a loss of employment.

Correia and Vivanco testify to remarkably similar statements of the events. Samson contradicts them on this matter. Samson, however, did not testify that he did not make a threat. In his recollection of the conversation, he jumped from asking whether Correia has any integrity to Correia saying that Samson was going to be gone from the Union. There is thus no actual conflict between the testimonies of Samson, Correia, and Vivanco regarding whether the threat was made.

To the extent that there is any conflict, however, Samson's willingness to lie regarding his being bothered or upset about the petition to remove him makes his other testimony less credible. Since I observed that Correia and Vivanco confidently recalled the events on December 14 at hearing without pause, I find there are no credibility issues for Correia and Vivanco, I credit their testimony over Samson's and find: first, that Sam-

son told Correia that Correia “doesn’t know shit”; and second, that Samson threatened Correia with a loss of employment.

#### Legal Analysis

The General Counsel alleges that the Union violated Section 8(b)(1)(A) of the Act by way of its agent, Samson, threatening the Charging Party with loss of employment for engaging in the protected activity of handbilling. The Respondent denies these allegations and avers that the threat does not constitute a violation of Section 8(b)(1)(A) because Samson did not have any authority to carry out the threat.

Section 8(b)(1)(A) states that “it shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of their rights guaranteed” in Section 7 of the Act. 29 U.S.C. § 158(b)(1)(A). Handbilling is a protected activity so long as it does not encourage employees to refuse to engage in their employment. See *NLRB v. Servette, Inc.*, 377 U.S. 46, 48 (1964). Neither party alleges that the Charging Party attempted to encourage employees not to participate in their employment. Instead, the Charging Party simply informed other employees of their rights under Department of Transportation regulations and under the applicable collective bargaining agreements. (GC Exh. 2.) Thus, I find that Correia’s handbilling on December 14 is protected activity.

A union agent commits an unfair labor practice when he threatens an employee with loss of employment. See *Carpenters Union Local 180*, 328 NLRB 947, 948 (1999) (finding a violation when a union agent told a unit member that he was “going to lose all of [his employment] benefits” for leaving the union but staying with the company). The fact “[t]hat the actual loss or diminution of benefits results from actions taken by third parties [here the Employer] is not an exculpatory factor under these circumstances.” *Id.* at 950. See also *Bay Cities Metal Trade Council*, 306 NLRB 983, 985–986 (1992), *enfd.* 15 F.3d 1099 (9th Cir. 1993) (same)<sup>5</sup>. The test for whether this threat is an unfair labor practice is whether the threat would reasonably coerce the unit member into preventing him from exercising his protected activities. *Longshoremen ILA Local 333 (ITO Corp.)*, 267 NLRB 1320, 1321 (1983).

Here, I find that the threat Samson made would reasonably coerce Correia from exercising his protected right of handbilling. By making the threat, Samson clearly intended to stop Correia from actively participating in the Union. Thus, under the reasoning in *Carpenters Union Local 180*, Samson’s December 14 threat to Correia constitutes a Section 8(b)(1)(A) violation.

The Respondent cites several cases arguing that Samson could not violate Section 8(b)(1)(A) because he had no power to exercise his threats. Each case the Respondent cites is distinguishable on the facts. The first case, *International Longshoremen’s Association, Local 28 (Ceres Gulf, Inc.)*, 367 NLRB No. 128, slip op. 2–11 (2019), involved allegations of

violating the duty of fair representation and discriminatory treatment within the union. *Id.* There, the General Counsel failed to prove that the union acted with animus toward the alleged discriminatee on the basis of sex or engaging in protected activity. *Id.* Moreover, unlike here, in *International Longshoremen’s Association*, the alleged discriminatee engaged in no protected activities. *Id.* Even further, the judge in *International Longshoremen’s Association* found that no one from the union made a threat to the alleged discriminatee. *Id.* Thus, although the Respondent seeks to use this case to argue that Samson had to have the power to carry out his threat to violate Section 8(b)(1)(A), the fact that this case involved no protected activity and thus no retaliation means it is totally inapposite to the analysis here.

The second case, *Wenner Ford Tractor Rentals, Inc.*, 315 NLRB 964 (1994), involved a situation where the union agent caused the employer to remove the employee engaging in protected activities. *Ibid.* There, the union caused the employer to replace the discriminatee as the master mechanic. *Id.* at 965. Nothing in this opinion, however, disputes the reasoning in *Carpenters Union Local 180*. Although the Respondent cites to the *Wenner Ford Tractor Rentals, Inc.* case for the proposition that Samson had to have the power to carry out the threat to violate Section 8(b)(1)(A), *Wenner Ford* contains no such proposition. It merely holds that a union causing an employer to fire a discriminatee due to the discriminatee’s protected activities violates the Act—nothing more. *Ibid.* Thus, the Respondent finds no support for its contention in this case, either.

The third case is *Motion Picture Studio Mechanics, Local 52 (Michael Levee Productions, Ltd.)*, 238 NLRB 9 (1978), where the union acted to prevent an employer from hiring a non-union employee. *Ibid.* There, the union refused to allow the employer to hire an otherwise qualified sound-mixer due to him not having membership in the union. *Id.* at 20. Here, unlike in *Motion Picture Studio Mechanics, Local 52*, Samson threatened Correia with loss of employment rather than preventing Correia from gaining employment in the first place. Furthermore, Samson threatened Correia because of Correia’s union activities and active union participation; *Motion Picture Studio Mechanics, Local 52* presents the exact opposite scenario. Thus, the Respondent’s citation to this case provides it no recourse.

The Respondent cites no case that allows it to overcome the controlling holding in *Carpenters Union Local 180*.<sup>6</sup> Accord-

<sup>5</sup> “I have considered that the threatened loss of employment benefits involved conduct which Respondent attributed to a third party, the Employer. Nonetheless, I am persuaded the threat is ‘coercive’ within the meaning of Section 8(b)(1)(A), inasmuch as it is a threat of the loss of existing employment benefits which was expressed to the employees by the labor organization.”

<sup>6</sup> The Respondent cites a fourth case, *Local 594, International Union, United Auto, etc. v. NLRB*, 776 F.2d 1310 (6th Cir. 1985). This case involves a union forcing discriminatees to withdraw an unfair labor practice charge and causing employees not to receive payment for the nonunion work they did. *Id.* at 1311. Moreover, the holding here agrees with the Board’s later statement in *Carpenters Union Local 180*. *Id.* at 1314 (The Union violates Section 8(b)(2) and (1)(A) of the Act . . . by attempting to cause an employer to discriminate in terms and conditions of employment against an employee in order to retaliate against that employee for protesting the Union’s policies, questioning the official conduct of Union agents, or incurring the personal hostility of a Union official.). Thus, this case does not even support the Respondent’s proposition. Even if it did, I would have to disregard it, as I must follow and apply Board precedent, notwithstanding contrary decisions by courts of appeal, unless and until the Board precedent is overruled by the Supreme Court or the Board itself. See *NLRB Division of Judges*

ingly, I find that the Union, through Paul Samson's threat, violated Section 8(b)(1)(A) of the Act.

#### CONCLUSIONS OF LAW

1. United Parcel Service, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent, Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542 is a labor organization within the meaning of Section 2(5) of the Act.
3. Paul Samson is an agent of the Respondent within the meaning of Section 2(13) of the Act.
4. Respondent violated Section 8(b)(1)(A) of the Act by threatening Derek Correia with a loss of employment for engaging in the protected activity of handbilling.

#### REMEDY

The appropriate remedy for the 8(b)(1)(A) violation that I have found is an Order requiring the Respondent to cease and desist from such conduct and take certain affirmative actions consistent with the policies and purposes of the Act.

Specifically, to the extent that the Respondent has not already done so, the Respondent shall cease and desist from threatening or in any manner retaliating against Correia or any other employee for handbilling.

The Respondent shall also cease and desist, in any other manner, from interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted at the Respondent's business office or wherever the notices to members or registrants of the hall are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members and registrants by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current members and registrants and former members or registrants of the Union. When the notice is issued to the Respondent, it shall sign it or otherwise notify the Region 21 Regional Director what action it will take with respect to this decision.

Accordingly, based on the foregoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>7</sup>

---

*Bench Book* (Wedekind 2019ed.) at Section 13–100 citing *Western Cab Co.*, 365 NLRB No. 78, slip op. at 1 fn. 4 (2017); and *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004).

<sup>7</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

#### ORDER

That Respondent, Teamsters, Chauffeurs, Warehousemen and Helpers, Local 542, International Brotherhood of Teamsters, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with a loss of employment because they engaged in union and protected concerted activities.

(b) In any like or related matter restraining or coercing employee in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices and meeting halls copies of appropriate Notice to Employers and Members. Copies of the Notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by United Parcel Service, Inc. at its facility located at 7925 Ronson Road, San Diego, California, if the Employer is willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of the Administrative Law Judge's Order, what steps have been taken to comply with the order.

Dated, San Francisco, California, July 17, 2019

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

In recognition of these rights, we hereby notify employees that:

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten employees with loss of employment because they engaged in union and protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS, LOCAL UNION NO. 542, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS (UNITED PARCEL  
SERVICE)

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/21-CB-233544](http://www.nlr.gov/case/21-CB-233544) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board,

1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

